IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8008 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ELABEN @ ASHABEN ASHWINBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8008 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

By filing this petition under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 28.4.2004 passed by the Police Commissioner, City of Vadodara and Detaining Authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "The PASA Act" for short), whereby, the Detaining Authority has exercised the powers under Sub-section 2 of Section 3 of the PASA Act. At present the present petitioner has been detained at Sabarmati Central Jail, Ahmedabad.

2. It is alleged that the order passed by the Detaining Authority is arbitrary, illegal and bad and the petitioner has been wrongly branded as "Dangerous Person" within the meaning of Section 2 (g) of the PASA Act. As per the grounds of detention conveyed to the present petitioner, it reveals that she has been involved in one offence registered with Gorva Police Station being CR No. II 22 of 2004 punishable under the provisions of The Suppression of Immoral Traffic in Women and Girls Act, 1956. When she was apprehended, police has recovered only Rs.50=00 from her. The petitioner has challenged the order of detention on various grounds, however, Mr. Prajapati, learned advocate for the petitioner has mainly raised only one grounds that involvement of the petitioner in such a solitary offence cannot be said to be against maintenance of public order and this court has set aside the order of detention in many cases, where, detenue was involved in only one offence. The offence registered against the present petitioner being a solitary, she ought not to have been detained under PASA Act. He next urged that even for the sake of arguments, if the allegations made against the petitioner are accepted, the case of the petitioner would not fall in the category of Immoral Traffic (Prevention) Act, 1956 and the petitioner cannot be branded as offender within the meaning of provisions of Suppression of Immoral Traffic in Women and Girls Act, 1956. Mr. Prajapati, learned advocate in support of this submission has placed reliance on one unreported decision of this court in case of Alibhai Musabhai Patel Vs. State of Gujarat in Special Civil Application No. 3218 of 2004 dated 28th June, 2004. The copy of the said unreported judgement has been tendered to the Court and same is taken on record. Para 2 and 3 of the said Judgement is reproduced herewith for the sake of convenience :

"para 2) : The said order of detention is challenged by the petitioner in this petition on the ground that there is only one criminal case registered against the petitioner and, therefore,

it cannot be said that the petitioner is a habitual offender and unless a person is habitual offender, he cannot be detained under PASA. To substantiate his say, learned advocate for the petitioner has relied upon Section 2 (g) of the Gujarat Prevention of Anti-Social Activities Act, which reads as under :-

" ... .
2. Definition - In this Act, unless the context otherwise requires, -
xxx xxx xxx
(g)"Immoral traffic offender" means a person who habitually commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956);
... ...
(Emphasis supplied)

3) It is not in dispute that there is only one case registered against the petitioner in which he is released on bail. Even statement of witness No. 1 is not in relation to immoral trafficking. Considering the fact that there is only a solitary case registered against the petitioner under the Immoral Traffic (Prevention) Act, 1956, it cannot be said that he is a "habitual offender". It is, no doubt, true that the petitioner has indulged in a serious offence but the same cannot be said to be the ground for treating him as a "habitual offender". Learned advocate for the petitioner pointed out that the petitioner is released on bail for the said offence. However, it is for the concerned court to consider the seriousness of the offence"

3. Having considered the ratio of the decision of this court, the detention order under challenge cannot sustain and therefore, it is required to be quashed and set aside. Accordingly, this petition is allowed. The order of detention dated 28.4.2004 passed by the Police Commissioner, Vadodara is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required to be detained in connection with any other case. Rule is made absolute. Direct Service permitted.

(C.K. Buch, J.)
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